

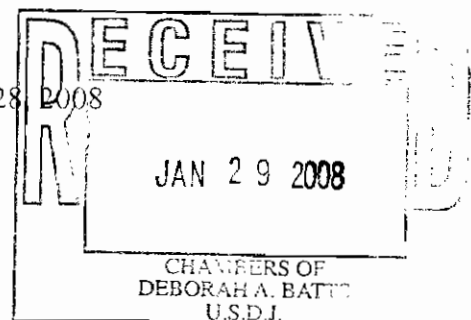


THE CITY OF NEW YORK
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Jan 29, 2008
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January 28, 2008



VIA HAND DELIVERY

Honorable Deborah A. Battin
 United States District Judge, SDNY
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street
 New York, New York 10007

Re: Francisco Lozada v. Thomas DeKoker et al., 07 Civ. 10551 (DAB)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter in which the City of New York is not a named defendant.¹ In essence, plaintiff's complaint alleges excessive force and false arrest stemming from plaintiff's arrest on December 31, 2006 for criminal possession of crack-cocaine. I note for the Court's information that upon information and belief the only named defendant in this action, Police Officer Thomas DeKoker, received a copy of the summons and complaint on January 8, 2008. This office has not discussed with Officer DeKoker the manner of service and we make no representation herein as to the adequacy of service upon him. Based on the date Police Officer Thomas DeKoker received a copy of the summons and complaint, his answer is presently due today. A decision concerning this Office's representation of Officer DeKoker has not yet been made. Accordingly, given the time involved in determining the representation of a police officer, and in the interest of judicial economy, we hope that the court will, sua sponte, extend the time for Officer DeKoker to answer until March 28, 2008. Plaintiff is incarcerated and proceeding *pro se*; therefore, this application is made directly to the Court. I note further that no previous request for an extension has been made in this action.

MEMO ENDORSED

¹ This case has been assigned to Assistant Corporation Counsel Philip S. Frank, who is presently awaiting admission to the bar and is handling this matter under supervision. Mr. Frank may be reached directly at (212) 788-0893.

There are several reasons for seeking an enlargement of time in this matter. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. In this case, plaintiff alleges that defendant used excessive force and falsely arrested him on December 31, 2006, when plaintiff was arrested for criminal possession of crack-cocaine. Accordingly, it is necessary for our office to acquire as much information as possible concerning this matter in order to properly assess the case and respond to the complaint. Currently, this office is in the process of forwarding to plaintiff for execution a consent and authorization for the release of records that may have been sealed pursuant to New York Criminal Procedure Law § 160.50. The executed release is necessary for our office to obtain the District Attorney, Criminal Court and police records pertaining to plaintiff's underlying arrest and prosecution. In addition, given plaintiff's allegations that the excessive force used against him caused him physical injuries, this office is in the process of forwarding to plaintiff for execution a consent and authorization for the release of any records of medical treatment.

Further, the extension should allow time for this office to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent the individually named defendants. See Mercurio v. City of New York, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

I would like to assure the Court that we are attempting to move forward in this litigation as expeditiously as possible, and that the enlargement is necessary in order for us to proceed effectively. Accordingly, we would respectfully ask that the Court order a sixty-day enlargement for defendants' time to respond to the complaint, until March 28, 2008.

GRANTED
IDAB

I thank the Court for its time and consideration of this request.

Respectfully submitted,

David M. Hazan
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Assistant Corporation Counsel
Special Federal Litigation Division

cc: Via First Class Mail
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SO ORDERED

Deborah A. Batts

DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

Jan 29,
2008